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Attorney for Plaintiff:
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEVERLY MACCARIO, Plaintiff, -vs.- THE UNITED STATES DEPARTMENT OF JUSTICE; THE FEDERAL BUREAU OF INVESTIGATION; and BERTRAM FAIRRIES, Defendants.	Case No.: **COMPLAINT FOR DAMAGES** **Jury Trial Requested**

Plaintiff Beverly Maccario, by and through her attorneys, Bohbot & Riles, PC, respectfully allege as follows:

NATURE OF THE CASE

1. This is a civil action for personal injuries suffered by Plaintiff Beverly Maccario ("Plaintiff") against Defendants United States Department of Justice, Federal Bureau of Investigation and Bertram Fairries (collectively "Defendants"). This action arises out of a motor vehicle accident on November 5, 2014 in Oakland, California, in which an FBI vehicle operated by Fairries struck Plaintiff. The Defendants' negligence was a substantial contributing factor in causing Plaintiff's injuries.

PARTIES

2. Plaintiff, BEVERLY MACCARIO, at all times mentioned herein was a resident of the State of California.

3. Defendant UNITED STATES DEPARTMENT OF JUSTICE ("DOJ") is a business entity the precise form of which is unknown to Plaintiff. On information and belief, Plaintiff alleges that the DOJ is a federal executive department of the United States and is authorized to do business in the State of California with offices located in Alameda County and elsewhere.

4. Defendant FEDERAL BUREAU OF INVESTIGATION ("FBI") is a business entity the precise form of which is unknown to Plaintiff. On information and belief, Plaintiff alleges that the FBI is a federal law enforcement agency of the United States, operating as the principal investigative arm of the DOJ and is authorized to do business in the State of California with offices located in Alameda County and elsewhere.

5. Defendant BERTRAM FAIRRIES (hereinafter "Fairries") is an individual employed as a Special Agent for the Federal Bureau of Investigation, residing in the State of California.

VENUE AND JURISDICTION

6. This Court has original jurisdiction over this action under 28 U.S.C. § 1346(b)(1), in that this Court has exclusive jurisdiction of civil actions on claims against the United States for money damages for injury or loss of property caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment.

7. Venue is proper in this district because the events which give rise to this action occurred in Oakland, California, in the County of Alameda, which falls within the jurisdiction of this Court. Further, any potential witnesses to the accident are likely to be located in or around Alameda County, California.

FACTUAL ALLEGATIONS

8. On November 5, 2014 at or around 8:45 a.m., Plaintiff was traveling north on foot in a designated crosswalk at the intersection of Broadway and 21st Streets in Oakland, California.

9. As the light for her turned green, Plaintiff proceeded through the crosswalk.

10. Plaintiff was halfway through the intersection when she was hit from behind by a vehicle driven by Mr. Fairries. At the time, Mr. Fairries was operating an FBI vehicle and performing the duties of an employee of the federal government.

11. The impact from the vehicle caused Plaintiff to slide and spin off of the hood of the car and fall to the ground.

12. Upon falling, the front wheel on the driver's side drove over Plaintiff's right foot, breaking it and tearing her skin.

13. Plaintiff was then transported to the emergency room at Kaiser in Oakland via ambulance for treatment where it was discovered that she suffered a complete fracture of the second metatarsal in her right foot with a subsequent spiral fracture extending up into the M2 bone.

14. It was determined by the Oakland Police Department that the driver, Bertram Fairries was at fault for failing to yield to a pedestrian in a crosswalk and was cited under Vehicle Code 21950 (a).

15. Plaintiff required significant medical care after this incident and has thus incurred significant medical expenses. Plaintiff continues to experience joint pain, painful scar tissue, swelling in her foot and ankle, as well as suffers from fear and anxiety when crossing the street.

16. Plaintiff requires further medical care as a result of this incident, including but not limited to, reconstructive surgery of torn ligaments.

17. On or around June 1, 2015, Plaintiff filed a Claim for Damage, Injury or Death.

FIRST CAUSE OF ACTION:
NEGLIGENCE
(AGAINST ALL DEFENDANTS)

18. Plaintiff incorporates by this reference each and all of the allegations contained in paragraphs One through Seventeen, inclusive, of this Complaint above as fully as though set forth at length herein.

19. On or about November 5, 2014 at or around 8:45 a.m., Plaintiff was walking in a designated crosswalk on or near Broadway Street in Oakland, California.

20. At the time, Mr. Fairries was an employee of the FBI and was operating his FBI vehicle in the regular course of business.

21. While Plaintiff was lawfully walking in the crosswalk, Mr. Fairries struck Plaintiff.

22. Defendants were careless and negligent in the ownership and operation of its motor vehicle, which caused Plaintiff to suffer personal injuries.

23. As a direct and proximate result of said collision, Plaintiff was caused to sustain painful bodily injuries, including but not limited to multiple fractures, torn ligaments and torn skin.

24. As a direct and proximate result of the physical injuries sustained by Plaintiff, she may be left with disabilities that will in the future cause her pain and suffering and may require medical treatment.

25. As a further direct and proximate result of said acts or omissions, Plaintiff was required to and did employ physicians for medical examination, treatment and care of the aforementioned personal injuries, and has incurred and will continue to incur medical, rehabilitation and incidental expenses for the care and treatment of said injuries, the exact amount of which are unknown at the present time. Plaintiff prays leave to amend this Complaint to allege the amounts of such expenses when the same have been fully ascertained.

WHEREFORE, Plaintiff prays judgment against the Defendants, and each of them, as fully set forth below.

SECOND CAUSE OF ACTION:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(AGAINST ALL DEFENDANTS)

26. Plaintiff incorporates by this reference each and all of the allegations of paragraphs One through Twenty-five, inclusive, of this Complaint above as fully as though set forth at length herein.

27. When Defendants, and each of them acted and/or failed to act toward Plaintiff as alleged within this complaint, Defendants reasonably should have known that Plaintiff would suffer extreme emotional distress and harm as a result of such acts or failures to act by Defendants.

28. As a direct and consequential result of such actions, or failure to act by defendants, and each of them, Plaintiff has suffered extreme emotional distress to her person as a result of shock to her nervous system and direct physical injury to her person. Such harm includes, but is not limited to, pain, anxiety, humiliation, anger, shame, embarrassment, frustration and fear. Plaintiff alleges that Defendants, and each of them, are liable for such harm suffered by her.

29. Plaintiff has suffered general and special damages as a direct and consequential result of this harm inflicted by Defendants. Such damages shall be proved more fully at trial.

WHEREFORE, Plaintiff prays judgment against the Defendants, and each of them, as fully set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants, and each of them, as follows:

1. all actual, consequential and incidental losses, according to proof;
2. pre and post-judgment interest as allowed by law;
3. an award of attorneys' fees as allowed by law;
4. an award of taxable costs; and
5. any and all such further relief as this Court deems just and proper.

DATED: April 11, 2017

BOHBOT & RILES, PC

Mark Miyasaki, Esq.
Attorney for Plaintiff Beverly Maccario

PLAINTIFF HEREWITH DEMANDS A TRIAL BY JURY AS TO ALL ISSUES SO TRIABLE AS A MATTER OF RIGHT, PURSUANT TO F.R.C.P. 38 (b)(1).

DATED: April 11, 2017

BOHBOT & RILES, PC

Mark Miyasaki, Esq.
Attorney for Plaintiff Beverly Maccario